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82-03545

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Executive Registry

82-03545

CENTER FOR NATIONAL SECURITY  
STUDIES, et al.,

Plaintiffs

v

CENTRAL INTELLIGENCE AGENCY,  
et al.,

Defendants

Civil Action

No. 80-1235

FILED

APR 6 1982

JAMES F. DAVEY, Clerk

M E M O R A N D U M

Plaintiffs bring this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976). In Count VII, the only count presently before the Court, plaintiffs seek an order directing the Central Intelligence Agency (CIA) to disclose the dollar amount representing the fiscal year 1979 budget for the National Foreign Intelligence Program (NFIP). To support the withholding of this information, the CIA invokes exemption 1, relating to national security information, see 5 U.S.C. § 522(b)(1), and exemption 3, covering records specifically exempted from disclosure by other statutes, see 5 U.S.C. § 552(b)(3). Count VII is before the Court on plaintiffs' motion for summary judgment and defendant's motion to dismiss or, in the alternative, for summary judgment.

Under exemption 1, the Court must determine whether the information at issue is, "in fact, properly classified' pursuant to both procedural and substantive criteria" established by an Executive Order. S. Rep. No. 1200, 93d Cong., 2d Sess. 12 (1974) (Conference Report) (quoting 5 U.S.C. § 552(b)(1)). In this case, plaintiffs challenge only the substantive classification of the information at issue, the NFIP budget figure.

The CIA classified the NFIP budget figure as "Confidential" under Executive Order 12065, 3 C.F.R. 190 (1979). As both parties

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agree, a classification of "Confidential" satisfies the substantive criteria of Executive Order 12065 only if (1) the information at issue concerns certain matters enumerated in section 3-101 of the Executive Order and (2) disclosure of the information "reasonably" could be expected to cause at least identifiable damage to the national security."

In determining whether the NFIP budget figure is properly classified under the substantive criteria of Executive Order 12065, the Court must "accord substantial weight to detailed agency affidavits and take into account that the executive had 'unique insights into what adverse affects might occur as a result of public disclosure of a particular classified record.'" Ray v. Turner, 587 F.2d 1187, 1194 (D.C. Cir. 1978) (footnotes omitted) (quoting S. Rep. No. 1200, 93d Cong., 2d Sess. 12 (1974) (Conference Report)). Despite this judicial deference to agency insight in exemption 1 cases, the agency retains the burden of establishing the applicability of the exemption. Id.

In this case, the CIA's classification of the NFIP budget figure as "Confidential" satisfies the first substantive criterion of Executive Order 12065. As stated in the affidavit of William J. Casey, the Director of Central Intelligence, the NFIP budget figure logically falls within subsection (c) of section 3-101, which includes information that "concerns. . . intelligence activities, sources or methods."

The CIA's classification of the NFIP budget figure as "Confidential" also satisfies the second substantive criterion of Executive Order 12065. According to the Casey affidavit, which the Court finds to be sufficiently detailed and convincing, several types of identifiable damage reasonably could be expected to result from the unauthorized disclosure of the NFIP budget figure. Disclosure to our adversaries of the amount of money expended by the federal government on intelligence-related activities

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for fiscal year 1979, especially if disclosure continued on an annual basis, could reasonably be expected to:

- (1) enhance our adversaries' abilities to develop measures, both human and technical, to negate certain of our intelligence activities, sources or methods; and
- (2) enable our adversaries to analyze and correlate fluctuations in amount of money expended with ongoing intelligence activities, sources or methods.

In making these findings, the Court recognizes that "each individual piece of intelligence information, much like a piece of a jigsaw puzzle, may aid in piecing together other bits of information even when the individual piece is not of obvious importance in itself." Halperin v. Central Intelligence Agency, 629 F.2d 144, 150 (D.C. Cir. 1980).

The Court concludes that the NFIP budget figure is properly classified as "Confidential" under Executive Order 12065 and thus is exempt from disclosure under exemption 1 of the FOIA. Accordingly, plaintiffs' motion for summary judgment is denied, and defendant's cross-motion is granted.

An Order consistent with this Memorandum follows.

  
United States District Judge

Dated: April 6, 1982

(N)

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O R D E R

Upon consideration of plaintiffs' motion for summary judgment on Count VII, defendant's motion to dismiss or, in the alternative, for summary judgment, memoranda filed by the parties, oral argument of counsel and the entire record, it is by the Court this 6<sup>th</sup> day of April 1982

ORDERED that plaintiffs' motion for summary judgment on Count VII is denied, and it is further

ORDERED that defendant's motion for summary judgment on Count VII is granted.

  
United States District Judge